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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiffs #1-21, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE COUNTY OF SUFFOLK; SUFFOLK COUNTY POLICE DEPARTMENT; COMMISSIONER EDWARD WEBBER, individually and in his official capacity; SUPERVISORY JOHN DOE DEFENDANTS, individually and in their official capacities; LIEUTENANT MILAGROS SOTO, individually and in her official capacity; SCOTT GREENE, individually and in his official capacity; OFFICER PODORMER, individually and in her official capacity; JOHN DOE DEFENDANTS, individually and in their official capacity,

Defendants.

Case No. 15cv 2431 (ADS)(GRB)

Date: April 29, 2015

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION TO PROCEED ANONYMOUSLY

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INTRODUCTION

Plaintiffs #1-21 and the proposed class they seek to represent[1] are Latinos in Suffolk County who, for many years, have been targeted by Suffolk County Police Department ("SCPD") officers for unfounded traffic or pedestrian stops based on their race and/or ethnicity (hereinafter "race"). Plaintiffs have further been searched or detained and then either robbed of their personal property (money), or issued unjustified traffic citations, or otherwise harassed. Taken together with a pervasive history of racial discrimination and bias against Latinos[2] by the Suffolk County executives, the legislature, the Police Department, and Suffolk County residents, this police misconduct has made Plaintiffs and other Latinos extremely reluctant to bring these legal claims against their abusers. Plaintiffs fear that any litigation will lead to further harassment or retaliation, including the extreme harm of deportation. Accordingly, Plaintiffs seek permission to proceed anonymously so as to ensure they can act to protect their constitutional rights through this action. Their need for anonymity is further supported by Plaintiffs' status as undocumented immigrants subject to deportation who are challenging various Suffolk County entities and officials. Plaintiffs' interests in proceeding anonymously both serve the public interest and overwhelm any conceivable harm these governmental entities and officials might suffer as a result of their anonymity in this action.

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[1] The Class Plaintiffs seek to represent consists of all past, present, and future Latino individuals who are, have been, or will be at risk of being subject to discriminatory and unconstitutional policing services by the Suffolk County Police Department, including policies, patterns, and practices permitting racially targeted stops, frisks, detentions, searches, the wrongful deprivation of property, unlawful traffic citations, and/or the failure to conduct even handed race-neutral investigations of crimes and police misconduct perpetrated against Latinos, in violation of the Fourth, Fifth, and Fourteenth Amendments.

[2] The terms "Hispanic and Latino," used interchangeably in this motion, reference a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race, the definition of Hispanic or Latino origin used in the 2010 Census. U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010*, at 2 (Mar. 2011), *available at* http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf (included as Trasande Decl. Ex. #1).

STATEMENT OF FACTS

I. Suffolk County, Historically One of the Nation's Most Segregated Communities, Has Experienced Significant Latino Population Growth over the Past Two Decades, Triggering Racial Animus and Hostility Toward Latinos

Census data from 2000 and 2010 shows that Long Island has long been, and continues to be, one of the most segregated regions in the country. For instance, segregation between Latinos and Whites has increased from 37.1 to 48.5, as measured by a dissimilarity index, between the 1980 and 2010 censuses, with Latinos experiencing the fastest population growth of any racial or ethnic group on Long Island during that time.[3] Specifically, the Latino population in Suffolk County, Long Island, grew from 6.6% in 1990 to 10.5% in 2000 and 16.5% in 2010.[4] Certain communities within Suffolk County possess Latino population concentrations of as high as 68.5%.[5] At the same time, the racial makeup of school districts and other population data show that Latinos in Suffolk County have simultaneously grown more isolated.[6] Suffolk County also has the highest deportation rate for any county in New York State, excluding New York City.[7]

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[3] See *infra* n.6.

[4] Suffolk Cnty. Gov't, *Planning & Research, Census Data*, Hispanic Population 1980–2010, *available at* http://www.suffolkcountyny.gov/Departments/Planning/Divisions/PlanningResearch.aspx (last visited Apr. 21, 2015) (included as Trasande Decl. Ex. #2).

[5] *Brentwood CDP, NY, Census Designated Place, State and County Quickfacts, 2010 Census*, http://quickfacts.census.gov/qfd/states/36/3608026.html (last visited Apr. 21, 2015) (included as Trasande Decl. Ex. #3).

[6] *See, e.g.*, ERASE Racism, *Heading in the Wrong Direction: Growing School Segregation on Long Island*, (Jan. 2015), *available at* http://www.eraseracismny.org/storage/documents/ERASE_Racism_2015_Education_Equity_Report_final_web.pdf (included as Trasande Decl. Ex. #4); Rashid Mian, *Study: LI Still Among Most Segregated Regions in US*, Long Island Press (Feb. 24, 2011), *available at* http://archive.longislandpress.com/2011/02/24/study-li-still-among-most-segregated-regions-in-us/ (finding that minorities make up 28 percent of the population on Long Island, but minority groups live separately from white residents) (included as Trasande Decl. Ex. #5).

[7] *See Long Island Ranks High in Deportation Program*, Newsday, *available at* http://data.newsday.com/long-island/data/politics/us-immigration-deportation/ (last visited Apr. 27, 2015) (included as Trasande Decl. Ex. #6).

Given these drastic demographic shifts, it is of little wonder that 52% of Latinos surveyed on Long Island report experiencing direct discrimination or feeling discomfort because of their racial or ethnic background.[8] Nineteen percent of those Latinos surveyed report that they have been stopped by the police at least once solely because of their race.[9] When asked to state the most important factor leading to Latino discrimination, 36% of those Hispanics surveyed in a 2010 nationwide study cite presumptions regarding Latino immigration status, up from 23% who said the same in 2007.[10]

A. Long Island Hate Groups Continue to Target and Harass Suffolk County's Latino Population

Corresponding with the steady population growth of Latinos in the 1990s, Suffolk County has seen the rise and rapid growth of militant anti-immigrant groups. Organizations such as Federation for American Immigration Reform ("FAIR"), a national anti-immigrant hate group, as well as the former militant anti-immigrant group Sachem Quality of Life ("SQL") have actively recruited Suffolk County residents to become members and have carried out street demonstrations and propaganda campaigns in the Suffolk County area. Anti-immigrant groups have specifically protested against the presence of day laborers in Suffolk County, declaring their ultimate goal to be the deportation of all undocumented immigrants, and have launched propaganda campaigns depicting Latinos as inherently prone to rape, armed robbery, and other violent crimes.[11] Most recently, the Ku Klux Klan ("KKK") has re-engaged in active recruiting across Long Island, including in Suffolk County, distributing flyers which read "Save Our Land, Join the Klan" and directing individuals to automated phone messages which discuss the KKK's efforts against illegal immigration.[12]

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[8] ERASE Racism, *Black and Latino Experiences with Discrimination on Long Island*, 3 (Nov. 21, 2008), *available at* http://www.eraseracismny.org/storage/documents/housing/Long_island_survey_report_2009.pdf (included as Trasande Decl. Ex. #7).

[9] *Id.* at 2.

[10] Mark Hugo Lopez, Rich Morin & Paul Taylor, *Illegal Immigration Backlash Worries, Divides Latinos*, Pew Hispanic Research Center (Oct. 28, 2010), *available at* http://www.pewhispanic.org/2010/10/28/illegal-immigration-backlash-worries-divides-latinos/ (included as Trasande Decl. Ex. #8).

B. The Suffolk County Legislature, Executive, and Police Department Have Championed Efforts Designed to Drive Undocumented Immigrants out of the County

The inflammatory statements and anti-immigrant goals put forth by these hate groups have been furthered by the acts of local government and government actors throughout Suffolk County,[13] who have routinely demonstrated bias against Latinos through the introduction and adoption of initiatives specifically intended to harass or otherwise harm Latinos in Suffolk County. For instance, in the early 2000s, the towns of Brookhaven,[14] Babylon,[15] Islip,[16]

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[11] Southern Poverty Law Center, *Climate of Fear: Latino Immigrants in Suffolk County, N.Y.*, 11-13 (Sept. 2009), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/splc_suffolk_report.pdf (included as Trasande Decl. Ex. #9).

[12] *See, e.g.*, *KKK fliers found at Hampton Bays bank*, News 12 Long Island (Apr. 6, 2015), *available at* http://longisland.news12.com/news/kkk-fliers-found-at-hampton-bays-bank-1.10208755 (included as Trasande Decl. Ex. #10); Kyle Campbell, *More KKK Flyers Passed Out in Hampton Bays*, The Southampton Press (Feb. 4, 2015), *available at* http://www.27east.com/news/article.cfm/Hampton-Bays/95760/More-KKK-Flyers-Passed-Out-In-Hampton-Bays (included as Trasande Decl. Ex. #11); *More KKK recruitment flyers found on Long Island*, WABC-TV New York (Sept. 18, 2014), *available at* http://7online.com/news/more-kkk-recruitment-flyers-found-on-long-island/313865/ (included as Trasande Decl. Ex. #12); Reuven Blau, *KKK is using pamphlets to recruit in the Hamptons in Long Island*, Daily News (Aug. 24, 2014), *available at* http://www.nydailynews.com/new-york/kkk-recruiting-hamptons-article-1.1915500 (included as Trasande Decl. Ex. #13).

[13] *See, e.g.*, Vivian S. Toy, *Border Warriors*, New York Times (Oct. 22, 2000), *available at* http://www.nytimes.com/2000/10/22/nyregion/border-warriors.html (included as Trasande Decl. Ex. #14); Al Baker, *A Rising Long Island Voice in Immigration Debate*, New York Times (July 6, 2001), *available at* http://www.nytimes.com/2001/07/06/nyregion/a-rising-long-island-voice-in-immigration-debate.html (included as Trasande Decl. Ex. #15); Mary Reinholz, *A Harder Line in Farmingville*, New York Times (June 8, 2003), *available at* http://www.nytimes.com/2003/06/08/nyregion/a-harder-line-in-farmingville.html (included as Trasande Decl. Ex. #16).

[14] Brookhaven, N.Y., Code ch. 82, Neighborhood Preservation, et seq., *available at* http://ecode360.com/8596302 (included as Trasande Decl. Ex. #17).

[15] Babylon, N.Y., Code ch. 153, Multiple Dwellings, et seq., *available at* http://ecode360.com/6808068 (included as Trasande Decl. Ex. #18); *see also* Joe R. Feagin, *Officials Must Stop Housing Bias Against Latinos*, Newsday (Apr. 17, 2001), *available at* http://www.newsday.com/officials-must-stop-housing-bias-against-latinos-

Southampton,[17] and Riverhead[18] passed legislation imposing strict conditions on non-owner occupied rental housing, including limitations on the number of people occupying rental homes and significant new enforcement mechanisms, measures known to have a disproportionate impact on the Latino community. Consequently, in 2004 and 2005, communities across Suffolk County, often supported by the SCPD, engaged in heightened enforcement of these zoning code violations via extensive raids that exclusively targeted Latino day laborers and their families and resulted in mass, "no notice, no standards" evictions based on supposed overcrowding and health and safety code violations.[19]

Suffolk County legislators have also introduced bills authorizing litigation against the United States Immigration and Naturalization Service to ensure the aggressive enforcement of federal deportation laws[20] and passed resolutions seeking to require companies doing business with the County to separately certify with the County their compliance with federal immigration

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1.307645?view=print (included as Trasande Decl. Ex. #19).

[16] Islip, N.Y., Code, ch. 68, art. L, Rental Dwelling Units, et seq., *available at* http://ecode360.com/11752146 (included as Trasande Decl. Ex. #20).

[17] Southampton, N.Y., Code, ch. 270, Rental Properties, et seq., *available at* http://ecode360.com/8697294 (included as Trasande Decl. Ex. #21); *see also* Corey Kilgannon, *Crackdown on L.I. Landlords Is Criticized as Harassment of Immigrants*, New York Times (Jan. 15, 2008), *available at* http://www.nytimes.com/2008/01/15/nyregion/15housing.html?pagewanted=1&_r=0&sq (included as Trasande Decl. Ex. #22).

[18] Riverhead, N.Y., Code ch. 86, Rental Dwelling Units, et seq., *available* at http://ecode360.com/10404522 (included as Trasande Decl. Ex. #23).

[19] In December 2005, following a federal court suit instituted in the Eastern District of New York, *Valdez v. Town of Brookhaven*, No. 2:05-cv-04323-JS-ARL, 2005 WL 3454708 (E.D.N.Y. Dec. 15, 2005), such actions were found to be illegal.

[20] Suffolk County Legislature Introductory Resolution No. 1752-2000, Resolution No. 689-2000, Authorizing litigation against the United States Immigration and Naturalization Service to mitigate illegal alien public safety impact in Suffolk County, *available at* http://legis.suffolkcountyny.gov/clerk/Proceedings/2000/08-31-00.htm (included as Trasande Decl. Ex. #24).

law regarding the hiring of work-authorized employees.[21] As part of his efforts to protect what he termed "the suburban dream," former County Executive Steve Levy went so far as to co-found "Mayors and Executives for Immigration Reform," a group promoting immigrant-cleansing ordinances.[22]

Latino laborers gathering for work within Suffolk County have sparked similar racial bias from Suffolk County residents, legislators, and the SCPD.[23] The animosity that is still displayed toward Latino day laborers is perhaps best summed up by the words of former County Legislator Elie Mystal of Amityville, who told Newsday, "If I'm living in a neighborhood and people are gathering like that, I would load my gun and start shooting, period."[24] Championing local ordinances designed to drive undocumented immigrants out of Suffolk County, former County Executive Levy added in a New York Times interview, "People who play by the rules work hard to achieve the suburban dream of the white picket fence. . . . If you live in the suburbs, you do not want to live across the street from a house where 60 men live. You do not want trucks riding up and down the block at 5 a.m., picking up workers."[25] In January 2007, Suffolk County

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[21] Suffolk County Legislature Introductory Resolution No. 2025-2006, Resolution No. 1056-2006, Local Law No. 52-2006, Local Law to require companies doing business with the County to certify compliance with Federal Law with respect to lawful hiring of employees, *available at* http://legis.suffolkcountyny.gov/resos2006/i2025-06.htm (included as Trasande Decl. Ex. #25).

[22] Opinion, *Long Island: The Riddle of Steve Levy*, New York Times (Nov. 4, 2007), *available at* http://www.nytimes.com/2007/11/04/opinion/nyregionopinions/LI-Levy.html (included as Trasande Decl. Ex. #26).

[23] For instance, in August 2004, contractors operating in Suffolk County—believed to have a greater tendency to employ undocumented workers—were subjected to a County sting operation in which they were singled out for violations ranging from failure to pay sales tax and unemployment insurance to failure to have a license. *See, e.g.*, Bart Jones, *Suffolk Sting Operation; Levy Targets Contractors; Tickets Issued By County For Sales Tax, Other Violations, But Activists Fear Focus Will Be On Day Laborers*, Newsday, Aug. 25, 2004, at A16 (included as Trasande Decl. Ex. #27).

[24] Southern Poverty Law Center, *Climate of Fear: Latino Immigrants in Suffolk County, N.Y.*, 8 (Sept. 2009), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/splc_suffolk_report.pdf (included as Trasande Decl. Ex. #9); *see also* Chau Lam, *He was political trailblazer*, Newsday, Sept. 18, 2008, at A16 (included as Trasande Decl. Ex. #28).

[25] Paul Vitello, *Suffolk's Leader Wins a Following on Immigration*, New York Times (June 13, 2007), *available at*

Legislators Jack Eddington and Joseph Caracappa introduced an anti-loitering/solicitation bill ("IR 1022") that attempted to ban Latino day laborers from seeking employment along county roadways by making it unlawful for day laborers to loiter or stand along county roadways for the purpose of attempting to solicit products or services.[26] When IR 1022 failed to pass, certain legislators wrote to then–SCPD Commissioner Richard Dormer encouraging stronger police enforcement of traffic safety laws, believing that the problems outlined in these anti-loitering bills could be adequately addressed by the officers of the SCPD. (Compl. at ¶ 138). The SCPD, in turn, agreed to enforce the traffic laws which would "achieve the same objectives as were contained" in the anti-loitering bill. (Compl. at ¶ 138).

Due to pressure from certain County legislators and then–County Executive Steve Levy to diminish the presence of Latinos in Suffolk County in 2007, Suffolk Assistant Chief of Patrol Robert Ponzo ordered officers to arrest any person operating a motor vehicle who is not licensed. (Compl. at ¶ 138). Upon information and belief, that policy remains in effect today and has led to the aggressive pursuit and stopping without cause of undocumented Latino immigrants driving on Suffolk County roads, forming, in part, the basis of the allegations in Plaintiffs' complaint. (Compl. at ¶ 139-43). This policy is only one example of how the long history of racially biased actions by Suffolk County officials continues to pervade the treatment of Latinos in Suffolk County today by residents and the SCPD alike.

C. In Addition to Targeting Latinos for Unfounded Law Enforcement Activities, the SCPD Has Failed to Provide Policing Services to Latinos in a Race-Neutral Manner by Neglecting to Protect and Serve Latino Victims of Crime

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http://www.nytimes.com/2007/06/13/nyregion/13levy.html?pagewanted=print (included as Trasande Decl. Ex. #29).

[26] James T. Madore, *Anger Over New Bill; Most Speakers tell Suffolk Legislators They Oppose Plan to Crack Down on Laborer Gatherings*, Newsday, Mar. 7, 2007 (included as Trasande Decl. Ex. #30); Suffolk County Introductory Resolution No. 1022-2007, Resolution No. 233-2007, A Local Law To Prohibit The Obstruction Of County Roadways, *available at* http://Legis.Suffolkcountyny.Gov/Resos2007/I1022-07.htm (included as Trasande Decl. Ex. #31).

This anti-Latino sentiment championed by Suffolk County legislators and executives, along with the members of anti-immigrant groups and other residents, permeates all forms of Suffolk County Government and reflects an environment where violence against Latinos is ignored by the SCPD. Suffolk County not only has the highest rate of hate crimes per capita in New York State but also the lowest arrest rate for hate crimes. (Compl. at ¶ 133). A 2012 review of hate crime data conducted by BiasHELP, Inc., an affiliate of The Long Island Network of Community Services, Inc., reveals Nassau and Suffolk County accounted for 27% of New York State hate crimes, despite the fact that these counties contained just 18.6% of New York State's population. (Compl. at ¶ 133). Additionally, while 27% of New York State hate crimes were committed in Nassau and Suffolk County, there was only a 5% arrest rate for such crimes. (Compl. at ¶ 133). Between 2011 and 2012 alone, Suffolk County had experienced a 200% rise in reported hate crimes, from 39 to 117. (Compl. at ¶ 133). Despite this increase, the New York State Division of Criminal Justice Services (the "DCJS") and the former head of the SCPD Hate Crimes Unit have both detailed how the SCPD and the Suffolk County legislature fail to track hate crimes data, routinely underreport the hate crime data which is collected, and directly inhibit the work of the Suffolk County Hate Crimes Unit by undermining its ability to investigate hate crimes and close cases. (Compl. at ¶ 135).

News and advocacy sources, including The New York Times and the Southern Poverty Law Center, have extensively detailed the numerous hate crimes targeting the Latino population that occurred unabated by police intervention.[27] This includes the attacks perpetrated by a group

[27] Anne Barnard, *Latinos Recall Pattern of Attacks Before Killing*, The New York Times (Jan. 9, 2009), *available at* http://www.nytimes.com/2009/01/09/nyregion/09patchogue.html?pagewanted=all&_r=0 (included as Trasande Decl. Ex. #32); Anne Barnard, Lindsey McCormack & Karen Zraick, *Detailed Accounts of Attacks in Patchogue*, The New York Times (Jan. 9, 2009), *available at* http://www.nytimes.com/2009/01/09/nyregion/09patchoguesidebar.html?page wanted=all (included as Trasande

of seven teenagers known as the "Caucasian Crew," who assaulted and robbed Latino laborers in Suffolk County on a weekly basis for several years until they were finally arrested in 2008 for the murder of Marcelo Lucero, a thirty-seven-year-old Ecuadorian resident of Suffolk County.[28] While three Caucasian Crew attacks on Hispanic men occurring on November 3, 2008 and November 8, 2008 were prosecuted,[29] dozens and dozens, if not hundreds, of other hate crimes targeting Suffolk County Latinos have gone without investigation or arrest of the responsible individuals. (Compl. at ¶ 134).

Given the pervasive climate of anti-Latino sentiment and violence in Suffolk County, Plaintiffs have a well-founded fear of retaliation as a result of bringing this Complaint against the County of Suffolk and the SCPD. Their concerns for the physical and emotional well-being of their families and themselves are only compounded by their well-placed fear of deportation. The long history of bias detailed above, coupled with the allegations of widespread illegal and unconstitutional treatment of Suffolk County Latinos detailed in the Complaint, demand that Plaintiffs' request to proceed anonymously be granted here.

ARGUMENT

I. Plaintiffs' Interest in Anonymity Outweighs the Public's Interest in Disclosure or Any Possible Resulting Prejudice to Defendants

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Decl. Ex. #33); Southern Poverty Law Center, *Climate of Fear: Latino Immigrants in Suffolk County, N.Y.*, (Sept. 2009), *available at* http://www.splcenter.org/sites/default/files/downloads/publication/splc_suffolk_report.pdf (included as Trasande Decl. Ex. #9).

[28] Kieran Crowley, *Teens' Hate Spree Led To Murder: DA*, New York Post (Nov. 21, 2008), *available at* http://nypost.com/2008/11/21/teens-hate-spree-led-to-murder-da/ (included as Trasande Decl. Ex. #34); Andrew Strickler, *LI Hate Killing: 'Determined' to cause harm; At arraignment, prosecutor says seven teens charged in man's death were looking for Hispanic targets*, Newsday, Nov. 11, 2008, at A07 (included as Trasande Decl. Ex. #35).

[29] *People v. Conroy*, 102 A.D.3d 979, 979-80 (N.Y. Sup. Ct. App. Div. 2d Dep't 2013).

Recognizing the potential need for courts to protect the identity of parties to an action, the Federal Rules of Civil Procedure allow for "a limited number of exceptions to the general requirement of disclosure . . . which permit plaintiffs to proceed anonymously." *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008) (internal citations omitted) (quoting *Roe v. Aware Woman Ctr. for Choice*, 253 F.3d 678, 685 (11th Cir. 2001)); *cf.* Fed. R. Civ. P. 10(a). These exceptions include instances such as the one faced here—where undocumented immigrants are suing state or governmental bodies and fear deportation as a consequence of asserting a substantive legal right. *See Lozano v. City of Hazelton*, 620 F.3d 170, 195 (3d Cir. 2010), *vacated for further consideration on other grounds*, 131 S. Ct. 2958 (2011). Notably, the Supreme Court allowed plaintiffs to proceed anonymously in a case involving undocumented children, even though the issue of anonymity was never actually raised before the Court—no doubt due to the extreme vulnerability of the plaintiffs. *See Plyler v. Doe*, 457 U.S. 202 (1982). The Third and Eleventh Circuits have, in turn, allowed undocumented immigrants to proceed anonymously where they feared retaliation from both the public-at-large and governmental authorities. *Hispanic Interest Coalition of Alabama ("HICA") v. Governor of Alabama*, 691 F.3d 1236, 1247 (11th Cir. 2012) (noting that revealing the illegal status of undocumented individuals could lead to "prosecution, harassment, and intimidation") (citing *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000)); *Lozano*, 620 F.3d at 195 ("[B]ecause of their unlawful status, [Plaintiffs] would face an 'exponentially greater' risk of harassment, and even physical danger, if their identities were revealed."). This case is no different.

Accordingly, in deciding whether a plaintiff should be permitted to proceed anonymously, courts must balance a plaintiff's interest in anonymity against "both the public interest in disclosure and any prejudice to the defendant." *Sealed Plaintiff*, 537 F.3d at 189; *see also Doe v. Univ. of Conn.*, No. 3:09CV 1071 (JGM), 2013 WL 4504299 (D. Conn. Aug. 22, 2013) (permitting both plaintiff and defendant to proceed anonymously due to the sensitive nature of the charges). The Second Circuit has identified a non-exhaustive list of ten factors to consider when engaging in this balancing test. The overwhelming balance of these factors weighs in favor of allowing Plaintiffs to proceed anonymously in this action. These factors are as follows:

> (1) whether the litigation involves matters that are 'highly sensitive and [of a] personal nature'; (2) 'whether identification poses a risk of retaliatory physical or mental harm to the . . . party [seeking to proceed anonymously] . . . ; (3) whether identification presents other harms and the likely severity of those harms . . . ; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure . . . ; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously . . . ; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity; (9) 'whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Sealed Plaintiff, 537 F.3d at 190 (internal citations omitted); *see also Guerrilla Girls*, *v. Kaz*, 224 F.R.D. 571, 573 (S.D.N.Y. 2004); *EW v. New York Blood Center*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003); *Doe v. Greiner*, 662 F. Supp. 2d 355 n.7 (S.D.N.Y. 2009). Plaintiffs, whose identity remains confidential to date,[30] have a significant interest in being allowed to proceed anonymously due to their well-founded fear of retaliation and deportation if they come forward and identify themselves as undocumented immigrants specifically targeted by the SCPD and Suffolk County and other related officials. Further, Plaintiffs' race-based discrimination class action claims present purely legal issues about the constitutionality of Defendants' actions that do not require knowledge of Plaintiffs' identities. Anonymity will, therefore, not noticeably prejudice Defendants. To the contrary, both Plaintiffs and the public-at-large have aligned interests in the maintenance of Plaintiffs' anonymity in this action given that the Complaint challenges long-standing government action and seeks to secure necessary reforms of unconstitutional SCPD police practices and procedures. Absent the security that will be provided by protecting their identities, some or all Plaintiffs may decide that the potential harms of bringing a complaint far outweigh its benefits, resulting in both a loss to Plaintiffs and the public-at-large.

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[30] Certain Plaintiffs cooperated in the Suffolk County District Attorney's Grand Jury investigation of Sgt. Greene (Compl. at ¶ 83) based on assurances from the Suffolk County District Attorney that their identities and immigration status will be kept confidential and not disclosed to federal immigration authorities. For participating in that investigation, some Plaintiffs received U Visa certifications; however, the U-Visa program currently faces an extreme application backlog, and none of the Plaintiffs have received U Visas yet. See Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, U.S. Dep't of Homeland Security

A. Plaintiffs' Risk Retaliatory Physical and Mental Harm if Publicly Identified or Identified to Defendants

"[P]arties [may] use pseudonyms . . . when nondisclosure of the party's identity 'is necessary . . . to protect a person from harassment, injury, ridicule or personal embarrassment.'" *Lozano v. City of Hazelton*, 496 F. Supp. 2d 477, 506 (M.D. Pa. 2007) (citing *Advanced Textile Corp.*, 214 F.3d at 1067-68). In light of the long history of direct discrimination against Latinos in Suffolk County at the hands of citizens, the government, and the SCPD, as carefully detailed in the Complaint, Plaintiffs face a significant risk of being targeted for further harassment, including physical, emotional, and monetary harm. As such, they should be permitted to proceed anonymously.

(Jan. 29, 2009) available at https://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf (included as Trasande Decl. Ex. #36). Additionally, even if some Plaintiffs ultimately succeed in obtaining a U Visa, such visas are effective only for 4 years, and can be lost if Plaintiffs are convicted of a crime, leaving the Plaintiff applicants vulnerable to police retaliation and potential deportation.

1. Suffolk County Latinos Live in an Environment of Fear and Hostility so Extreme It Creates a Justified Fear of Retaliation if Plaintiffs' Identities Are Disclosed

There is a long history of ethnic and racial segregation on Long Island as well as direct discrimination against Latinos in Suffolk County. (*See* Statement of Facts, *supra*.) Indeed, as the Complaint shows, the SCPD has independently contributed to the fearful climate faced by Latinos in Suffolk County by permitting racially targeted stops, frisks, detentions, and searches that culminate in either the wrongful deprivation of property (Compl. at §I (C)) or the issuance of unlawful traffic citations (Compl. at ¶ 155); and by failing to conduct even handed race-neutral investigations of crimes and police misconduct perpetrated against Latinos (Compl. at ¶ 192(e)). Moreover, Plaintiffs have a substantiated fear of retaliation based on their experiences assisting with the Suffolk County District Attorney's investigation of Sgt. Greene's "stop and rob" scheme specifically targeting Latinos. (Compl. at ¶ 83).

Specifically, upon coming forward to assist in the investigation against Defendant Greene, victims were informed that all communications regarding their assistance would come directly from the District Attorney's Office. However, the night before the first day of their grand jury testimony, three Plaintiffs to this action had several SCPD officers show up unannounced at their homes, allegedly to ask some last minute questions about their testimony, deeply frightening them such that their testimony was delayed. (Compl. at ¶ 83). This incident taken together with the already present "climate of fear and hostility" experienced by the Latino community at the hands of Suffolk County citizens, its legislature, executive, and its police department "creates a justified fear about revealing the . . . plaintiffs' identity," which merits the protection of Plaintiffs' anonymity. (Compl. at ¶ 194); *Lozano*, 496 F. Supp. 2d at 510. Given that far less significant actions have solicited threats of violence in the past (*see*, *e.g.*, Statement of Facts, *supra*), Plaintiffs have a legitimate fear of extreme retaliation resulting from the assertion of their rights in court.

2. Plaintiffs Risk Deportation if They Are Not Permitted to Proceed Anonymously

"[W]here . . . plaintiffs fear extraordinary retaliation, such as deportation, arrest, and imprisonment, plaintiffs do *not* need to prove that they face a danger of physical injury" in order to maintain anonymity when filing a civil complaint. *Advanced Textile Corp.*, 214 F.3d at 1071. That Suffolk County has the State's highest deportation rate[31] certainly makes reasonable Plaintiffs' fear of suffering such extraordinary retaliation and justifies their request that anonymity be granted. Accordingly, courts have granted anonymity under these circumstances, rightly recognizing that plaintiffs "with a more tenuous legal stature have an exponentially greater concern over the dangers of participating in a lawsuit that has generated such intense sentiment." *See, e.g.*, *Lozano*, 496 F. Supp. 2d at 510. Given these factors as well as the County's long history of championing efforts designed to drive undocumented immigrants out of the country, Plaintiffs reasonably fear that disclosure of their names will lead to arrests and deportation. (*See* Statement of Facts, *supra*.) Given these harms, without permission to proceed anonymously, Plaintiffs may be dissuaded from pursuing this action to vindicate their rights.

Deportation would cause great emotional and economic harm not only to Plaintiffs but to their families. *See, e.g.*, *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 479 (1963) ("[D]eportation is a drastic sanction, one which can destroy lives and disrupt families."). Recognizing the significance of this fact, the Second Circuit's balancing test for anonymity acknowledges that the "retaliatory physical or mental harm" that could befall innocent nonparties is even "more critical" than perhaps that to the parties themselves, thereby according such dangers more weight in requests for anonymity. *Sealed Plaintiff*, 537 F.3d at 190. Therefore, Plaintiffs' request should be granted given the potential collateral consequences to family members associated with Plaintiffs' suit. Plaintiffs should be spared from having to make a choice between vindicating their constitutional rights and putting themselves and their loved ones at risk.

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[31] *Long Island Ranks High in Deportation Program*, Newsday, *available at* http://data.newsday.com/long-island/data/politics/us-immigration-deportation/ (last visited Apr. 21, 2015) (included as Trasande Decl. Ex. #6).

B. Plaintiffs' Interest in Anonymity Is Particularly Strong as They Seek to Protect Their Constitutional Rights by Bringing a Suit Against Governmental Entities

Bringing suit to protect against racial discrimination by local governmental entities is an extremely difficult step for any individual to take, much less those as vulnerable as Plaintiffs and the class they seek to represent. Granting anonymity to Plaintiffs would therefore be a small step toward balancing the disparate authority held by Plaintiffs and Defendants in this case. "[W]here a plaintiff attacks governmental activity, for example a governmental policy or statute, the plaintiff's interest in proceeding anonymously is considered particularly strong" given that "[i]n such circumstances the plaintiff presumably represents a minority interest (and may be subject to stigmatization)." *EW*, 213 F.R.D. at 111 (internal citations omitted); *see also Doe v. Smith*, 189 F.R.D. 239, 242-43 (E.D.N.Y. 1998). There can be no question that Plaintiffs are entitled to such protection as they comprise 16.5% [32] of Suffolk County's population, which is 71.6% Caucasian,[33] and have been routinely subjugated to dominant Long Island governmental forces, including the SCPD and Suffolk County Executive and Legislature. This suppression includes

[32] Suffolk Cnty. Gov't, Planning & Research, Census Data, Hispanic Population 1980–2010, available at http://www.suffolkcountyny.gov/Departments/Planning/Divisions/PlanningResearch.aspx (last visited Apr. 21, 2015) (included as Trasande Decl. Ex. #2).

[33] *Id.*

the passing of housing legislation which disproportionately affects Latino families, expelling Latino families from their homes, and various measures aimed at preventing undocumented workers from obtaining employment and supporting their families. (*See* Statement of Facts, *supra.*)

These initiatives to drive Latinos out of Suffolk County demonstrate just how essential anonymity is for Plaintiffs if they are to proceed with this action. To do otherwise, and permit the disclosure of Plaintiffs' identity, would undermine their ability to effectuate their rights due to the justifiably feared backlash. Simply put, the risk from Plaintiffs' participation in an action where their identity is not protected would outweigh the potential benefits to be garnered through pursuit of this action under any other circumstances. *Rivera v. NIBCO*, 364 F.3d 1057, 1064 (9th Cir. 2004) ("[T]he chilling effect that the disclosure of plaintiffs' immigration status could have upon their ability to effectuate their rights outweighed [Defendants'] interests in obtaining the information."); *see also Liu v. Donna Karan Int'l*, 207 F. Supp. 2d 191, 193 (S.D.N.Y. 2002) (denying discovery of Plaintiffs' immigration status due to risk of injury to Plaintiff). Plaintiffs' anonymity therefore remains an essential condition to Plaintiffs' maintenance of this suit.

II. Any Possible Prejudice to Defendants Is Minimal and Outweighed by both the Public's and Plaintiffs' Interest in Anonymity

A. Requiring Disclosure Would Harm, Not Advance, the Public Interest by Rendering Plaintiffs Unable to Effectuate Their Constitutional Rights

Because a governmental entity and its actions, rather than those of an individual private party, are being challenged in this action, the public interest is in fact being advanced, not deterred, by allowing Plaintiffs to proceed anonymously. Courts have recognized that cases involving government defendants are ones in which "personal anonymity is more readily granted because of the existence of a public interest in the action and a lesser interest in [Defendants'] personal reputation." *EW*, 213 F.R.D. at 111. "[W]ithout the protection of anonymity," Plaintiffs will "likely decline to participate in the lawsuit . . . and the public's interest in testing the constitutionality" of the actions of Suffolk County and its police department "could remain unexplored." *Lozano,* 496 F. Supp. 2d at 512; *see also EW*, 213 F.R.D. at 111 ("where a plaintiff attacks governmental activity . . . there is arguably a public interest in a vindication of his rights"). Requiring disclosure of Plaintiffs' names in this case would not only discourage Plaintiffs from bringing this action, or any future challenge of government action, it would allow Defendants to continue to engage in discriminatory and unconstitutional practices without any repercussion. Therefore, the limited interest Defendants might have in obtaining Plaintiffs' names is far outweighed by the Plaintiffs' and the public's interest in seeing Plaintiffs proceed with the Complaint without the fear of harm or other retaliation. After all, "the public has an interest in determining the constitutionality of [government action] . . . and particularly in determining whether such [government action] violate[s] the constitutional rights of immigrants who lack authorization to enter or work in the United States." *Lozano*, 496 F. Supp. 2d at 512. Accordingly, both Plaintiffs and the public-at-large have aligned interests in the maintenance of Plaintiffs' anonymity in this action given that the Complaint challenges long-standing government action and seeks to secure necessary reforms of unconstitutional SCPD police practices and procedures.

B. Allowing Plaintiffs to Proceed Anonymously Presents No Harm to Defendants' Interests

Plaintiffs' claims present purely legal issues about the constitutionality of the SCPD and Suffolk County's actions that strongly support Plaintiffs being permitted to proceed anonymously. *See Sealed Plaintiff*, 537 F.3d at 190 ("there is an atypically weak public interest in knowing the litigants' identities" when the issues presented by the case are "purely legal");

Doe v. Cuomo, No. 10-CV-1534, 2013 WL 1213174, at *7 (N.D.N.Y. Feb. 25, 2013) ("Because of the purely legal nature of the claims presented, there is weak public interest in learning [plaintiffs'] identity and the public's interest in this litigation would not be furthered by disclosing [their] identity."). Plaintiffs bring a class action on behalf of Latinos in Suffolk County who have been subject to discrimination and harassment as a result of SCPD policies and practices. (Compl. at ¶ 41). Accordingly, the personal identities of the Plaintiffs, who merely seek to protect their rights as a minority class targeted for racial discrimination and harassment due to discriminatory SCPD policies and practices, are unnecessary to the cause of action and have little bearing on Defendants' ability to fully and fairly litigate their claims. In a class action case such as this one challenging governmental action, "the individual [party's] personal characteristics . . . are generally not in issue" and therefore weigh in favor of a grant of anonymity to Plaintiffs. *EW*, 213 F.R.D. at 111 (internal citations omitted); *see also Doe v. Smith*, 189 F.R.D. 239, 242-43 (E.D.N.Y. 1998).

Even if maintaining the anonymity of Plaintiffs would create some difficulties for Defendants, any hardship faced by Defendants in this case would be grossly outweighed by the benefits to Plaintiffs. Allowing Plaintiffs to proceed anonymously, therefore, will allow them to avoid the risk of dire harm without limiting the ability of Defendants to challenge the claims brought against them or their ability to provide a strong defense. *James v. Jacobson*, 6 F.3d 233, 240-42 (4th Cir. 1993) (rejecting the notion that plaintiffs' anonymity would limit the ability of defendant to impeach the credibility of plaintiffs or that it would create the assumption of guilt in the defendant).

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that their motion to proceed anonymously be granted and that Plaintiffs be permitted to commence this suit using the pseudonyms Plaintiffs #1-21. Alternatively, should the Court deem it necessary that Plaintiffs' identities be made known to the Court, Plaintiffs ask that a protective order be entered pursuant to which (i) Plaintiffs' identities are filed under seal; (ii) Plaintiffs' names, addresses, and other identifying information are withheld from Defendants; and (iii) any supporting declarations made by Plaintiffs with the potential to reveal their identities be maintained under seal with this Court and not be revealed or disclosed to Defendants or the public. Plaintiffs request that the Court take all necessary and appropriate measures to protect the identities of Plaintiffs from public disclosure. Plaintiffs reserve the right to seek additional relief to maintain their anonymity as this matter proceeds, if necessary.

Respectfully submitted,

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